

Appeal Decision

by [redacted] BSc FRICS

an Appointed Person under the Community Infrastructure Levy Regulations 2010 (as amended)

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Appeal Ref: 1894440

Planning Application Reference: [redacted]

Proposal: Part change of use of the Site from Office (Class E) to Hotel (Class C1); part retention of existing Office (Class E) for use as Affordable Workspace; façade improvements; demolition and rebuilding of the fifth floor; construction of a two-storey plus roof plant extension; provision of cycle parking; and associated works.

Address: [redacted]

Decision: Appeal dismissed.

Reasons

1. I have considered all of the relevant submissions made by [redacted] of [redacted] as Agent on behalf of [redacted] of [redacted] [Appellant] and [redacted] - the Charging Authority [CA] in respect of this matter. In particular, I have considered the information and opinions presented in the following documents:
 - a. Planning decision notice reference [redacted], dated [redacted].
 - b. CIL LN Ref [redacted] for £[redacted], dated [redacted].
 - c. CIL Appeal form dated [redacted], along with supporting documents referred to as attached.
 - d. Representations from the Appellant.
 - e. Representations from the CA.
 - f. Comments from the Appellant on the CA's Representations.

2. Planning permission [REDACTED] was granted by the [REDACTED] on [REDACTED] for the above proposal.
3. The CA issued Liability Notice [REDACTED], dated [REDACTED], assessing a Community Infrastructure Levy liability of £[REDACTED].
4. The Appellant did not agree with the CA's calculation. The Appellant requested a review of the Liability Notice pursuant to **Regulation 113** of the Regulations on [REDACTED].
5. The CA issued its Regulation 113 review decision on [REDACTED], maintaining the Liability Notice without amendment.
6. On [REDACTED], the Valuation Office received a Regulation 114 appeal against the chargeable amount stated within Liability Notice [REDACTED].
7. The appeal was initially advanced on two principal grounds – firstly, the Appellant contended that the CA had adopted incorrect floorspace inputs within the Regulation 40 / Schedule 1 calculation; and secondly, the Appellant contended that the Regulation 40 / Schedule 1 calculation had been applied incorrectly, specifically in relation to the treatment of the negative office floor space element arising from the calculation.
8. The CA opposed the appeal and submitted that the floorspace inputs adopted within the Liability Notice were correctly derived from measurements of the approved planning drawings; and the Liability Notice correctly applied Regulation 40 and Schedule 1 of the Regulations.
9. During the course of the appeal, further clarification was sought regarding the Schedule 1 calculation inputs. Following that process, the Appellant confirmed that they formally withdrew the aspect of the appeal concerning the floorspace inputs adopted by the CA and accepted, for the purposes of the appeal, the respective values adopted by the Charging Authority for G, GR, KR and E within the Regulation 40 / Schedule 1 calculation.
10. Accordingly, at the date of this Decision, the only remaining matter requiring determination is the correct application of Regulation 40 and Schedule 1 to the accepted floorspace inputs.

The Appellant's grounds of appeal can be summarised as follows:

11. The Appellant advanced the appeal on two principal grounds. Firstly, the Appellant submitted that the Schedule 1 calculation contained within Liability Notice [REDACTED] was prepared using incorrect floorspace inputs. The Appellant contended that alternative values should be adopted for G, E, GR and KR within the Regulation 40 / Schedule 1 calculation and that the resulting chargeable amount should be amended accordingly.
12. The Appellant submitted that the difference between the parties' respective calculations principally arose from the allocation of floorspace between the retained office and hotel uses.
13. Secondly, the Appellant disputed the CA's treatment of the office element within the Regulation 40 / Schedule 1 calculation - that the application of the statutory formula produces a negative result in respect of the office element and that this negative amount should be aggregated with the positive hotel amount when determining the overall

chargeable amount. The Appellant relied upon the wording of Schedule 1 paragraph 1(1), namely: "The chargeable amount is an amount equal to the aggregate of the amounts of CIL chargeable at each of the relevant rates."

14. The Appellant submitted that the Regulations require the amounts calculated at each relevant rate to be aggregated and that the Regulations contain no provision which requires a negative amount generated by the prescribed formula to be treated as zero before that aggregation exercise is undertaken.
15. The Appellant therefore contended that the chargeable amount stated within Liability Notice [REDACTED] is excessive and should be recalculated.

The CA has submitted representations which I have summarised as follows:

16. The CA opposes the appeal and requests that Liability Notice [REDACTED] be upheld without amendment. The Charging Authority identifies the appeal as raising two principal issues: whether the correct floorspace inputs have been adopted within the Regulation 40 / Schedule 1 calculation, and whether the office element has been correctly treated within the calculation of the chargeable amount.
17. The CA states that planning permission [REDACTED] was granted on [REDACTED] for a mixed-use development comprising part change of use from Office (Class E) to Hotel (Class C1), retention of part of the existing office accommodation as affordable workspace, façade improvements, demolition and rebuilding works, roof extensions and associated development.
18. The CA further states that evidence of lawful occupation was submitted and accepted for the purposes of lawful-use and demolition deductions under the CIL Regulations.
19. The CA states that Liability Notice [REDACTED] records:
 - Total development floorspace (G): [REDACTED] sqm;
 - Existing lawful floorspace deduction: [REDACTED] sqm;
 - Eligible demolition deduction: [REDACTED] sqm; and
 - Total chargeable area: [REDACTED] sqm.
20. The CA submits that there is no dispute that substantial deductions for existing lawful floorspace have been applied. In its view, the dispute concerns the calculation methodology and the floorspace inputs used in arriving at the chargeable amount.
21. In relation to the floorspace inputs, the CA submits that the Appellant's figures are derived from supporting planning application documentation rather than measurements taken from the approved planning drawings. The CA states that, for CIL purposes, Gross Internal Areas [GIA's] were measured directly from the approved plans using RICS methodology and subsequently reviewed during the Regulation 113 process.
22. The CA states that its verified Schedule 1 inputs are:

Input	Charging Authority Figure
G	[REDACTED] sqm
E	[REDACTED] sqm
KR Office	[REDACTED] sqm
KR Hotel	[REDACTED] sqm

GR Office	█	sqm
GR Hotel	█	sqm

23. The CA submits that these figures were measured from the approved drawings listed within the planning permission and independently reviewed during the Regulation 113 review process. Accordingly, it contends that these figures represent the correct basis for the Schedule 1 calculation.

24. In relation to the treatment of the office element, the CA submits that the Liability Notice records:

Hotel chargeable area: █ sqm;
Office chargeable area: █ sqm; and
Total chargeable area: █ sqm.

25. The CA states that the office element has therefore already been taken into account within the overall calculation and that the Appellant has already received the benefit of lawful-use and demolition deductions through the operation of the Schedule 1 formula. The CA submits that the negative office figure arises because retained office floorspace is deducted through KR and because eligible demolition floorspace is apportioned through the E element of the calculation.

26. The CA further submits that the Regulations contain no mechanism for:

- a negative CIL liability;
- a transferable credit between charging rates; or
- a reduction in the liability attributable to one use by reference to a negative result generated by another use.

27. The CA therefore contends that the Appellant's interpretation would amount to a further deduction beyond that already provided for within the Schedule 1 calculation and is unsupported by the Regulations. It concludes that Liability Notice █ has been correctly calculated and should be upheld.

The Appellant submitted comments on the CA's representations which I summarise as follows:

28. The Appellant maintains that the CA's interpretation of Regulation 40 and Schedule 1 requires words to be read into the Regulations which do not appear within the statutory wording.

29. The Appellant submits that Schedule 1 prescribes a mathematical exercise and that, where application of the prescribed formula produces a negative figure, the Regulations do not provide that the figure is to be treated as zero before the aggregation exercise is undertaken. The Appellant further submits that the Regulations contain no deeming provision requiring such a result.

30. The Appellant states that they are not contending that a negative CIL liability should arise. Rather, the Appellant's position is that a negative amount generated by the prescribed formula forms part of the aggregation exercise required by Schedule 1 paragraph 1(1) when determining the overall chargeable amount.

31. The Appellant submits that, if Parliament had intended a negative figure generated by the Schedule 1 formula to be treated as zero before aggregation, the Regulations would have made express provision for that outcome. The Appellant therefore contends that the

Regulations should be applied according to their ordinary wording and that no additional step should be introduced into the statutory calculation.

32. In relation to floorspace, the Appellant notes the CA's position that its figures should be preferred because they were measured from the approved planning drawings. The Appellant disputes that conclusion and submits the [REDACTED] IPMS/RICS Area Referencing Report dated [REDACTED] in support of its figures.
33. The [REDACTED] report states that [REDACTED] was instructed to measure areas at [REDACTED] and provide corresponding IPMS, Gross Internal Area and Net Internal Area calculations. The report states that measurements were undertaken on [REDACTED] in accordance with relevant RICS measurement standards and that the property was fully occupied and fitted out at the time of survey.
34. The Appellant submits that the [REDACTED] survey provides support for the floorspace figures relied upon within the appeal and states that those figures were used by the project team during the planning application process.
35. The Appellant therefore maintains that the Liability Notice overstates the chargeable amount and contends that the Regulations require the negative office element to be taken into account as part of the overall aggregation exercise when calculating the final CIL liability.

Having fully considered the representations made by the Parties, I make the following observations regarding the grounds of the appeal:

36. This appeal was originally advanced on two grounds. The first concerned the floor area inputs adopted by the CA within the Regulation 40 / Schedule 1 calculation. The second concerned the treatment of the negative office element arising from application of the Schedule 1 formula.
37. During the course of the appeal, additional information was sought from the parties regarding the Schedule 1 inputs. Following that process, the Appellant confirmed that they formally withdrew the aspect of the appeal concerning the floor area inputs adopted by the CA and accepted, for the purposes of this appeal, the respective values adopted by the CA for G, GR, KR and E. Accordingly, the floor area inputs are no longer in dispute and do not require determination as part of this appeal. As those measurement inputs are now agreed for the purposes of the appeal, no finding is required regarding the interpretation of GIA or the measurement methodology advanced by either party.
38. I therefore proceed on the basis of the following accepted Schedule 1 inputs:

Input	Accepted Value
G	[REDACTED] sqm
E	[REDACTED] sqm
GR Office	[REDACTED] sqm
KR Office	[REDACTED] sqm
GR Hotel	[REDACTED] sqm
KR Hotel	[REDACTED] sqm

39. The remaining issue requiring determination concerns the correct application of Regulation 40 and Schedule 1 of the Regulations to those accepted inputs. Specifically, the issue is whether the negative office element generated by the prescribed formula should reduce the positive hotel liability when calculating the overall chargeable amount.

40. Schedule 1 paragraph 1(6) provides that:

$$A = GR - KR - (GR \times E / G)$$

Applying the accepted inputs produces the following results.

41. For the office element:

$$A = \text{[redacted]} - \text{[redacted]} - (\text{[redacted]} \times \text{[redacted]} \div \text{[redacted]})$$

which results in a value of [redacted] sqm.

42. For the hotel element:

$$A = \text{[redacted]} - \text{[redacted]} - (\text{[redacted]} \times \text{[redacted]} \div \text{[redacted]})$$

which results in a value of [redacted] sqm.

43. The existence of a negative office figure is not disputed. Applying the accepted inputs produces a negative office value of A. The question is not whether the Schedule 1 formula is capable of producing a negative figure. On the accepted facts of this appeal, it clearly does. The issue requiring determination is the consequence of that result under the Regulations.

44. Schedule 1 paragraph 1(1) provides that:

"The chargeable amount is an amount equal to the aggregate of the amounts of CIL chargeable at each of the relevant rates."

45. Schedule 1 paragraph 1(2) further provides that, where that aggregate amount is less than £[redacted], the chargeable amount is deemed to be zero. The Appellant relies on that express deeming provision in support of the submission that the statutory calculation should first be completed, including any negative amount, before the resulting aggregate is considered. I have therefore considered paragraph 1(2) alongside the remaining provisions of paragraph 1.

46. Schedule 1 paragraph 1(4) provides that:

"The amount of CIL chargeable at a given relevant rate (R) must be calculated ..."

using the prescribed statutory formula.

47. The structure of Schedule 1 therefore requires separate calculations to be undertaken for each relevant charging rate before arriving at the overall chargeable amount. The Regulations recognise that different parts of a development may be subject to different charging rates and prescribe a methodology by which the amount chargeable at each relevant rate is first established.

48. I note the Appellant's submission that the Regulations do not expressly provide that a negative figure should be treated as zero prior to aggregation. I accept that no such express provision appears within Schedule 1. Equally, however, I can identify no provision which expressly provides that a negative result generated within the calculation for one charging rate should be carried across and applied as a credit against liability arising at another charging rate.

49. The accepted inputs produce a negative value of A for the office element. Applying that negative value within the paragraph 1(4) formula would, as a matter of arithmetic, also

produce a negative monetary figure at the office rate. The Appellant submits that this figure should form part of the aggregation required by paragraph 1(1). The CA submits that a negative monetary figure is not an amount of CIL chargeable and cannot be transferred as a credit against the amount chargeable at the hotel rate.

50. Reading Regulation 40 and Schedule 1 as a whole, I find the CA's interpretation to be more consistent with the structure of the statutory calculation. The Regulations provide a mechanism for calculating the amount chargeable at each relevant rate and then aggregating those amounts.
51. Paragraph 1(1) requires the aggregation of the amounts of CIL chargeable at each relevant rate. In my consideration, this requires an amount chargeable at each relevant rate first to be established in accordance with paragraph 1(4). Although application of paragraph 1(6) may produce a negative value of A, Schedule 1 does not expressly describe that negative result as a credit, repayment or amount transferable between relevant rates. I therefore do not consider that a negative figure arising at the office rate constitutes an amount of CIL chargeable which may be deducted from the positive amount chargeable at the hotel rate.
52. For the reasons set out above, I conclude that the chargeable amount stated within Liability Notice [REDACTED] has been calculated in accordance with Regulation 40 and Schedule 1 of the Regulations. The challenge to the floor area inputs has been withdrawn, those inputs are accepted for the purposes of the appeal, and I conclude that Regulation 40 and Schedule 1 do not provide for the negative office result to be applied as a credit against the amount chargeable at the hotel rate.
53. The appeal is therefore dismissed and Liability Notice [REDACTED] is upheld.

[REDACTED] BSc FRICS
Appointed Person

Valuation Office
3 September 2026